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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,296	06/21/2001	Hsien-Jue (Steve) Chu	AM100221	6853
25291	7590	11/10/2005	EXAMINER	
WYETH PATENT LAW GROUP 5 GIRALDA FARMS MADISON, NJ 07940			DEVI, SARVAMANGALA J N	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 09/887,296	Applicant(s) CHU ET AL.	
	Examiner S. Devi, Ph.D.	Art Unit 1645	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 01 November 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attachment (one page). (See 37 CFR 1.116 and 41.33(a)).

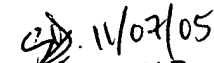
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: None.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-10 and 27-30.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: Attachment (one page).

  
S. DEVI, PH.D.  
PRIMARY EXAMINER

### Attachment to Advisory Action

The limitation newly added to claim 1: '*the* flavored orally administered vaccine', has improper antecedence and raises a new issue requiring further consideration under 35 U.S.C § 112, second paragraph, since the earlier part of the claim does not recite a 'flavored orally administered vaccine'.

The limitation newly added to claim 1: 'compared to unflavored', is vague and indefinite since what element is unflavored is not clear. This raises a new issue requiring further consideration under 35 U.S.C 112, second paragraph.

The limitation newly added to claim 1: 'protection against infection', raises a new issue under 35 U.S.C 112, second paragraph, because the method claimed in claim 1 is a method of providing 'protection against a *disease*'.

Contrary to Applicants' argument, no inference of 'patentable subject matter' was made in the Office Action mailed 06/01/05. The newly added and previously not presented phrase in claim 1: 'wherein the flavored orally administered vaccine provides greater protection against infection as compared to unflavored by inducing the increased intake of the vaccine by the animal', does not constitute the kind of amendment an Applicant would make to the claim in response to the Office's statement that "the method claimed in the instant claims is not required to provide 'improved results' or 'significant 100% protection'". Therefore, these new limitations could not have been reasonably expected. In addition to requiring further consideration under 35 U.S.C § 112 for the reasons delineated above, the above-identified new phrase requires a new search.

The amendment requested by replacing the paragraph at lines 24-26 on page 8 is denied entry since such a replacement is not possible at lines 24-26 of page 8 of the specification, as originally. Line 24 on page 8 of the specification does not begin with the limitation 'Poultry'.

SD- 11/07/05  
S. DEVI, PH.D.  
PRIMARY EXAMINER